



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**FEB 07 2019**

REPLY TO THE ATTENTION OF

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Dorian Reyna  
Power Stroke Enginuties  
4534 Saunders Road  
Houston, Texas 77093

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Reyna:

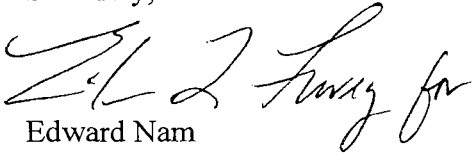
The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Power Stroke Enginuties (PSE or you) for violating Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(A) and 7522(a)(3)(B). As summarized in the attached FOV, EPA has determined that PSE has removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and has manufactured, sold, offered to sell, and installed parts or components that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Cody Yarbrough. You may call him at (312) 886-9137 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Nam", followed by a flourish.

Edward Nam  
Director  
Air and Radiation Division

Enclosure

cc: Stewart D. Cables, Partner  
Hassan+Cables, LLC  
stewart@hassancables.com

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Power Stroke Enginuties  
Houston, Texas

Proceedings Pursuant to  
The Clean Air Act,  
42 U.S.C. §§ 7401–7671q

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**FINDING OF VIOLATION**

**EPA-5-19-MOB-02**

**FINDING OF VIOLATION**

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Power Stroke Enginuties (PSE) for violating Section 203(a)(3)(A) and 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(A) and 7522(a)(3)(B).

**Statutory and Regulatory Background**

1. Title II of the CAA, 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)–(2) of the CAA, 42 U.S.C. § 7401(b)(1)–(2).
2. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), and other pollutants applicable to motor vehicles and motor vehicle engines, under Section 202 of the CAA, 42 U.S.C. § 7521. *See generally* 40 C.F.R. Part 86.
3. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a motor vehicle manufacturer from selling a new motor vehicle in the United States unless the motor vehicle is covered by a certificate of conformity. EPA issues certificates of conformity to motor vehicle and motor vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The certificate of conformity will include, among other things, a description of the motor vehicle engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.
4. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system,

computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”  
*See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.

5. To meet the emission standards in 40 C.F.R. Part 86, and qualify for a certificate of conformity, diesel-powered motor vehicle and motor vehicle engine manufacturers may utilize control devices or elements of design such as Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), Diesel Oxidation Catalyst (DOC), and/or Selective Catalytic Reduction (SCR) systems.
6. Diesel-powered motor vehicle and motor vehicle engine manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of NO<sub>x</sub>. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NO<sub>x</sub> emission rates, with advanced timing settings being associated with higher NO<sub>x</sub> . . .”).
7. Modern motor vehicles and engines are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the DPF, EGR, SCR systems and the engine fueling strategy.
8. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle’s emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. *See* 40 C.F.R. §§ 86.007-17, 86.010-18, and 86.1806-05. These devices or elements of design are referred to as “onboard diagnostic systems” or “OBD” systems.
9. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), makes it unlawful for “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.”
10. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), makes it unlawful for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

11. Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” See also 40 C.F.R. § 85.1703 (further defining “motor vehicle”).

### **Facility Background**

12. PSE is an aftermarket automotive parts supplier and installer located in Houston, Texas.
13. PSE is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. On June 25, 2018, EPA issued a CAA Section 208 Information Request to PSE.
15. On October 5, 2018, PSE submitted a partial response to EPA’s Information Request with supplementary responses submitted on October 23, 2018, and November 9, 2018. In the response, PSE provided information showing that between September 1, 2015, and June 25, 2018, PSE sold at least 1,648 parts or components and installed at least 1,223 parts or components on motor vehicles where a principal effect of each part or component was to disable, remove, bypass, defeat, or render inoperative air pollution emission control systems installed on or in diesel-powered motor vehicles and motor vehicle engines in compliance with Title II of the CAA. More specifically, PSE sold, offered for sale, and installed parts and components that removed, disconnected, bypassed or disabled the engine fueling strategy, DOCs, DPFs, EGRs, OBDs, and/or SCR systems, and/or tampered with the emissions-related elements of the ECM.
16. On its website ([www.psehouston.com](http://www.psehouston.com)), PSE offers for sale tunes and/or tuners from SCT, H&S Performance, GDP Tuning, and Spartan Diesel Technologies, among others, that are designed to reprogram the ECM and modify calibrations governing the operation of DPFs, EGRs, DOCs, SCRs, fuel-injection timing, OBDs, and/or other emissions-related elements of design.
17. On its website, PSE offers for sale numerous exhaust aftertreatment delete pipes from Flo-Pro and JAMO that are designed to remove, disable, or bypass exhaust aftertreatment components or elements of design such as DOC, DPF, and/or SCR components located in motor vehicle or motor vehicle engine exhaust systems.
18. On its website, PSE offers for sale EGR delete kits from No Limit Fabrication, Rudy’s Performance Parts, and PSE, among others, that are designed to remove, disable, or bypass EGRs located in motor vehicle or motor vehicle engine exhaust systems.
19. For many of the products sold on PSE’s website, PSE includes an online disclaimer containing the following statement:

WARNING! THIS IS A "RACE ONLY" PRODUCT USED SOLELY FOR COMPETITION. ITS USE IS LIMITED TO CLOSED-COURSE RACING THAT IS FORMALLY SANCTIONED BY A RECOGNIZED RACING ORGANIZATION. ANY OTHER USE, INCLUDING RECREATIONAL OFF-

ROAD USE, COULD BE IN VIOLATION OF LOCAL, STATE AND FEDERAL LAWS.

BY INSTALLING THIS PRODUCT ONTO YOUR VEHICLE, YOU ASSUME ALL RISK AND LIABILITY ASSOCIATED WITH ITS USE.

POWER STROKE ENGINEUTIES, LLC IS NOT RESPONSIBLE FOR MISUSE OF ITS PRODUCTS. BY INSTALLING THIS PRODUCT, YOU RELEASE POWER STROKE ENGINEUTIES, LLC OF ANY AND ALL LIABILITY ASSOCIATED WITH ITS USE.

20. EPA finds that the parts and components sold and offered for sale by PSE are intended for “motor vehicles” as defined by Section 216(2) of the CAA. As a legal matter, there is no “off-road use only” or “competition only” exemption under the CAA for motor vehicles or motor vehicle engines. “Motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” CAA § 216(2), 42 U.S.C. § 7550(2); *see also* 40 C.F.R. § 85.1703 (further defining “motor vehicle”). These definitions make no exemption for motor vehicles or motor vehicle engines used for competition.<sup>1</sup> More generally, these definitions are based on vehicle attributes (*e.g.*, ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

#### **Violations**

21. EPA finds that PSE violated and continues to violate Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), by knowingly removing and/or rendering inoperative the engine fueling strategy, DPF, EGR, OBD, and SCR systems and tampering with the emissions-related elements of the ECM installed on motor vehicles.
22. EPA finds that PSE violated and continues to violate Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling, offering to sell, and/or installing parts and/or components where a principal effect of the part or component was to bypass, defeat or render inoperative the engine fueling strategy, DPF, EGR, OBD, and SCR systems and tampering with the emission-related elements of the ECM installed on motor vehicles.
23. EPA further finds that PSE knew or should have known that such parts and/or components were being used by its customers to bypass, defeat, or render inoperative the emission controls on motor vehicles certified under the CAA.

#### **Environmental Impact of Violations**

24. These violations may result in excess emissions of PM, NO<sub>x</sub>, hydrocarbons, and other air

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<sup>1</sup> In contrast, the CAA exempts from the definition of “nonroad vehicle” and “nonroad engine” those vehicles and engines used solely for competition. CAA § 216(10)–(11), 42 U.S.C. § 7550(10)–(11). EPA has implemented regulations describing how to exempt from CAA requirements nonroad vehicles and engines used solely for competition. 40 C.F.R. § 1068.235. These regulations explicitly do not apply to motor vehicles and motor vehicle engines. 40 C.F.R. § 85.1701(a)(1).

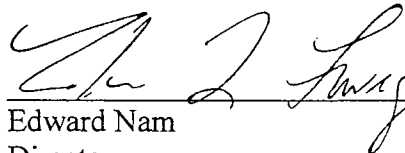
pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

**Enforcement Authority**

25. The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating Section 203(a)(3) of the CAA, 42 U.S.C. § 7522(a)(3), are subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,619 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Date

2/17/19



Edward Nam

Director

Air and Radiation Division

**CERTIFICATE OF MAILING**

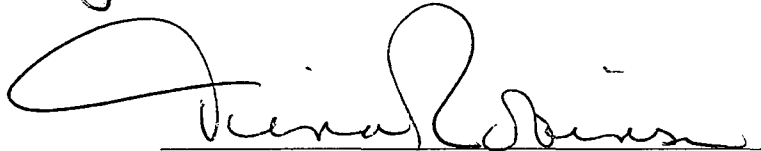
I certify that I sent a Finding of Violation, No. EPA-5-18-MOB-02, by Certified Mail, Return Receipt Requested, to:

Dorian Reyna  
Power Stroke Enginuties  
4534 Saunders Road  
Houston, Texas 77093

I also certify that I sent a Finding of Violation, by e-mail to:

Stewart Cables, Attorney  
Hassan + Cables, LLC  
Stewart@hassancables.com

On the 7<sup>th</sup> day of February 2019.



For Kathy Jones  
Program Technician  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7015 0640 000459652136